VOL. LXIX. PART IV.

Transactions *of* The Chartered Surveyors' Institution

SESSION 1935-1936.

AT THE ORDINARY GENERAL MEETING

Held at the Chartered Surveyors' Institution on Monday, 10th February, 1936.

Mr. HARRY M. STANLEY (President) in the Chair.

DEATH OF H.M. KING GEORGE V., PATRON OF THE INSTITUTION.

The PRESIDENT said that since the last Ordinary General Meeting the Institution and the Nation had suffered a grievous loss by the death of King George the Fifth, the first Royal Patron of the Institution. He did not think it was necessary for him to enlarge on the great character of the late King, to which many references had been made by speakers of greater ability than himself ; but he thought that everyone, and certainly all the members of the Institution, felt that they had lost not only a great king and a great man but one who appealed to them all personally. That personal feeling had been strongly shown both at the time of the Jubilee and at the funeral of the late King.

The members stood in silence for a short time as a token of respect.

NEW MEMBERS.

The following new members were presented by the PRESIDENT for formal admission to membership under By-law 32, and signed the Register:—

Professional Associates :

ANSCOMBE, NORMAN WRIGHT
BUTLER, KENNETH ARTHUR
BONTHRON, GORDON LAING
COOPER, ARTHUR
DARBY, RICHARD JAMES
DRON, CLEMENT FRANCIS
DRON, THOMAS JAMES
EDWARDS, ERNEST JOHN
FANSHAWE, ROBERT GORDON
FINEMAN, LOUIS HAROLD
GOODCHILD, GORDON FRANK
GURNEY, GEORGE WILLIAM ALFRED
HAZELRIGG, ARTHUR GREY
HEATH, REGINALD HERBERT
HOLLOWAY, WILLIAM JAMES
JENKINS, JOHN EDWARDS
LYNE, CYRIL JOHN
MAGER, GEORGE RICHARD
NICHOLSON, HERBERT GUY
PETERS, DENYS GEORGE
QUARMBY, ALAN CHARLES
RUBIE, DERRICK KER
SHORT, GEORGE STANLEY
SIMPSON, GEORGE GREGORY
SYMMONS, KENNETH DAVID
TAYLERSON, ARTHUR HUGH

ELECTION OF HON. MEMBER OF THE INSTITUTION.

On the motion of the President, the Right Hon. Lord Justice Scott was, with acclamation, elected an Honorary Member of the Institution.

EXPULSION OF MEMBER.

The PRESIDENT said he regretted to report that the Council, in accordance with their powers under By-law 25 (D), had had to order the expulsion of Mr. Robert William Theakston (Professional Associate) from the Institution.

A DISCUSSION took place on Mr. W. T. CRESWELL'S Paper entitled

THE LAW OF PARTY-WALLS OUTSIDE LONDON.

Mr. CRESWELL, in presenting his paper, said he had been asked to confine it to the law relating to party-walls outside London, but he could not refrain from first mentioning one or two things for those surveyors who practised in London. It was his experience that many of them thought that the provisions for the settlement of difference between building and adjoining owners under Section 117 of the London Building Act, 1930, provided that the so-called third surveyor was an umpire, which was not in fact the case. If Section 117 were carefully read it would be seen that it was an arbitration pure and simple, and not an umpirage, and that there were three arbitrators. A useful provision was that any two of the three could make an award.

He would also remind London surveyors that easements were not interfered with in the London Building Act. That was specially provided for in Section 127.

He had referred in his paper to the advisability of giving notice when anything was to be done to a party-wall, although that was not absolutely necessary. That was brought out in an important case decided in 1932, in case of *Roskill* v. *Cook*, in which Trollope & Colls, Ltd., contractors, were third parties. The only report of that case which he was able to find was contained in the *Estates Gazette Digest*, page 183. That case was of interest from a surveyor's point of view, for many professional experts gave evidence in the case, and it went on in the Court for about twenty days. Shortly a fire took place in Mr. Roskill's house, and it was said that Trollope & Colls had removed an old grate in Mr. Cook's house from a party-wall between Mr. Cook's house and Mr. Roskill's and installed one of more modern type, and had done their work negligently. It was asserted by the plaintiff that a wood-fixing block which had been used for fixing the skirtings had been left in, and the fire had spread through by means of the fixing block from one side to the other. Trollope & Colls, and the defendant also, said that they knew nothing of the block being there, that the work had been done properly and that there had been no negligence. The learned judge said that it was always advisable, and he thought Mr. Cook had a duty, to give Mr. Roskill notice of the work which was going on, but that had not been done. The case was an unfortunate one in that Mr. Roskill

lost his wife and one of his employees by the fire. The Court found that there had been no negligence in the matter, and so the verdict went to the defendants.

In London, again, it was possible for the district surveyor to find that a building was dangerous and to take measures to support it, but except in a few of the principal towns there was no like statute or even by-law in existence elsewhere. Generally, outside London a person could, so long as the public was not affected, live in a dangerous building and let it fall down upon him and so commit suicide, but in London there was no such privilege.

He had said in the paper that reasonable skill and care must be exercised by either of two adjoining owners who used a party-wall for the purpose of building upon it, or pulled it down for the purpose of rebuilding it, and that the liability could not be escaped by delegating the performance of the work to a contractor. That point had been emphasised in the case of *Roskill* v. *Cook*, where the judge said very definitely that Cook could not get rid of his liability by trying to foist it on Trollope & Colls, the third party in the case.

With regard to repairs and alterations, it was not generally known that under Section 23 (*e*) of the Public Health Acts Amendment Act, 1907, the mere raising of a roof or altering of a wall, such as by making an opening in it or making any slight projection to it, was an addition, and that addition constituted a new building, and as a new building the approval of the local authority had first to be obtained for the work.

In his own experience in London and elsewhere he had found that there was a tendency to build on the adjoining owner's property by projecting beyond the party-wall. He recalled one case not far removed from the Institution where the adjoining owner to his client's property had, on the party-wall, built a chimney-stack for a furnace and going up several feet in height. His client's real objection was that, although this was some distance from and at the back of the property, a room, the window of which overlooked this chimney-stack, was depreciated in value. This room was used by a dentist, and the first thing the dentist's patients saw when they came to sit in the dentist's chair placed in front of the window was that huge stack outside the window. Where there was trespass in that way in respect to a party-wall there was not the slightest doubt that one had the right to go and remove whatever had been erected—see *Burling* v. *Read* (1850), 11 Q.B., 904—but he did not advise doing that without giving notice. In the particular case to which he referred, the adjoining owner would not remove the chimney-stack, and so he advised his client to remove it, and the moment men went to do so the adjoining owner then began to negotiate terms.

Mr. GEORGE A. LANSDOWN (Member of Council) said it seemed to him that the law of party-walls outside London was very complicated, and the more he thought about it the more he liked the London Building Act.

He had never understood why the framers of the Act of 1925 decided, by Section 38, that a party-wall "shall be and remain "severed vertically as between the respective owners." He presumed it had something to do with the land on which the wall stood. Mr. Creswell said that the owner of each part of the party-wall might deal with his part as he pleased so long as he exercised due care, and that either owner might pull down that portion of the party-wall which stood on his own land, provided that he did not cause unnecessary damage to his neighbour's property. Mr. Creswell further said: "An owner pulling down his part of the "party-wall does not, it appears, need to give notice of his "intention to do so to the owner of the other part, though, of "course, it is wise to give notice." Personally he certainly thought it would be foolish not to give notice.

The procedure outlined was the opposite of that obtaining in London, where one gave notice and could pull down the whole of the wall. He wondered how it was possible to pull down half a party-wall and leave the rest standing up; it seemed to him that the whole wall would fall down, and probably the whole building. With an 18-inch wall it might be done, but with a 14-inch or 9-inch wall it would be practically impossible, and he did not know how Mr. Creswell suggested that that could be overcome.

On page 103 the author stated: "But if one of the owners "increases the height of a party-wall, or puts upon it any "obstruction, the adjoining owner may himself remove the "addition or the obstruction as of right." Presumably an owner could increase his half of the wall, *i.e.*, he could take his half of the wall and raise it on his side. It might be possible to do so with an 18-inch wall, which would give him 9 inches, but with a 14-inch wall he would have only 7 inches, and with a 9-inch wall, only 4½ inches, and might have to thicken the wall all the way down. In London one served notice to raise on the whole wall, and that got over the difficulty.

Mr. Creswell, on the same page, quoted the case of *Stedman* v. *Smith*, and said: "There was a shed on the defendant's "ground contiguous to the wall, the roof of which rested on "the top of the wall across the whole width. The defendant took "off the coping stones from the top of the wall and heightened "the wall, replacing the original coping stones." If the roof of the shed rested on the top of the wall across the whole width, personally he could not see where the coping stones came in.

He was afraid that some of the facts quoted in the paper

would give a surveyor mental indigestion. Mr. Creswell said that "In general, no contribution can be enforced from either of the "owners for the repair of a party-wall." Who was to repair the party-wall? There was an interesting case reported in the *Property Owners' Journal* which arose in West Ham, which was outside the county of London. The West Ham Corporation asked for an order against a Mr. Abel to compel him to make weather-proof the wall of a house at Junction Street, Canning Town. "The facts were that, in accordance with the old Canning Town "Clearance Order, a house in Junction Street had been demo-"lished, and notice had been served on Mr. Abel, the owner of "the adjoining house, to make the party-wall, now an external "wall, weatherproof. Mr. Phillips, the solicitor for Mr. Abel, "said that his client was not the legal owner of the wall, and "therefore not liable for the repairs. Under the Law of Property "Act, 1925, it was laid down that a party-wall was no longer "common property, but was to be divided longitudinally down "the centre. His client could not be the owner of that part "of the wall which had been left standing on the second owner's "property, and might be committing a trespass if he made the "wall weatherproof. The magistrate dismissed the summons with "costs." How did Mr. Creswell suggest that that wall should be repaired?

It was true that the London Building Act was about to be amended, which would give the impression that some amendment of it was necessary, but so far as party-walls were concerned little amendment was required. The Advisory Committee (upon which Mr. Bedells and he had sat) stated that the provisions of Part IX., which dealt with the rights of building and adjoining owners, have generally, with a few exceptions, worked to the satisfaction of building and adjoining owners. Those exceptions related to some small items of procedure and to problems due to modern developments of building methods, such as the concentration of loads on columns and grillage foundations under party-walls. Mr. Bedells had made some useful suggestions, particularly with regard to grillage foundations under party-walls, which the Committee had adopted and recommended in their report, and which they hoped would be given effect to in the new Building Act.

He was reminded of the poet who said that the more he saw of human beings the more he loved his dog. Personally the more he learned of and thought about the law of party-walls outside London, the more he liked the London Building Act. It was very good of Mr. Creswell to take the trouble to prepare and read his paper, and he had great pleasure in proposing a hearty vote of thanks to him for so doing.

Mr. BERNARD BRIANT (Fellow) said the members were greatly indebted to Mr. Creswell for his excellent paper, and he was very conscious of the privilege of being allowed to second the vote of thanks to him. Like Mr. Lansdown, his business was almost entirely inside London, and he knew very little about party-walls outside London. Thirty or forty years ago legislation on the lines of the London Building Act was suggested to deal with party-walls in the provinces, and it was to be hoped that the reading of Mr. Creswell's paper would not only revive that discussion but lead to something being done. It was interesting to note that the London Building Act was often taken as a model for voluntary agreements outside London.

He had been thinking of some cases in his own office during the last few years, and if there was any serious thought of codifying the position outside London, it might be helpful to mention them. They were all perhaps small points. He found that there was an inclination in too many cases to depart from the procedure, particularly by owners who, presumably wishing to save expense, sent small builders round without proper advice and with rough drawings and took all sorts of risks, at the expense of the adjoining owner's surveyor. An architect might be appointed to serve a notice, but did not superintend the actual demolition, or might prepare plans but not superintend the actual reconstruction. Again, the building owner might change his mind and decide either to abandon the scheme or to build an independent wall before the award was completed. He could find no provision by which the adjoining owner could recover the cost of his surveyor's fees in such cases and would like to know what Mr. Creswell had to say about that. In one case reconstruction work which should have taken three months actually took about three years, because the owner dispensed with the services of his architect and did the work by direct labour, and all sorts of minor irregularities occurred. The fee of the poor surveyor to the adjoining owner had been fixed by a proper award and was, of course, far too low in the circumstances.

In his experience, when the facts were clear, two competent surveyors who had the confidence of their clients could usually arrange what was fair to both sides, whether in common law or in statute law districts. Party-wall questions, to his mind, were best dealt with in a firm but friendly manner, and in a fair and neighbourly spirit, and it was possible to do that without prejudicing the interests of either of the owners ; but the building owner must say precisely what he intended to do and must supply sufficient drawings with his notice.

The members had heard, of course, that the tenancy in common of the party-wall had been abolished by the Law of

Property Act, and that party-walls were now regarded as being severed vertically. Each of the owners had a remedy for injury done to the wall by the other if there were any damage or nuisance, but it was surprising to hear that there was no legal obligation on the owner who pulled down to fill a gap left in the party-wall until a nuisance arose. It was also surprising that an owner pulling down his part of the party-wall was not compelled to give notice of his intention to the owner of the other part. It was difficult to see how one owner could deal with his part of the wall without interfering with the adjoining owner's rights, and the whole position, as Mr. Lansdown had said, was most complicated and confusing. Was it to be understood that outside London the building owner, without notice, could insert corbels or steelwork, provided that he did not go beyond the centre of the wall, and, if so, that the adjoining owner was expected to know what was being done without receiving any notice? At all events it was comforting to know, from an adjoining owner's point of view, that if the wall was taken down without any intention to rebuild, that was legal trespass.

He did not understand why the age of an adjoining owner's house should be taken into account in measuring damages. If the wall as it stood was sufficient for its purpose, he did not understand why the adjoining owner should be put to any expense. Of course if during the progress of the work the wall was found to be dangerous, apart from anything the building owner was doing, it was reasonable that the adjoining owner should contribute.

Mr. Creswell said that a local authority pulling down under compulsory powers was not empowered to repair the adjoining owner's property. Did that mean that the adjoining owner's rights of support and protection were not to be respected? At any rate in London he would have thought that the local authority became a building owner within the meaning of the Act.

In conclusion he would like to congratulate both Mr. Lansdown and Mr. Bedells on their membership of the Advisory Committee on the revision of the London Building Act. He had much pleasure in seconding the vote of thanks to Mr. Creswell for his excellent paper.

Mr. KENNETH M. MACMORRAN, K.C. (Visitor), expressed his pleasure at being permitted to address a meeting of members of the Institution. He felt a certain difference of opinion with the proposer and seconder of the vote of thanks; they had been, apparently, brought up on the London Building Act, but he confessed, as a mere lawyer, to a certain amount of distrust of the London Building Act and a certain feeling of security in the

common law of England. He remembered some years ago being consulted in regard to a dispute over a wall in London, in Kingsway. There was no doubt about the fact that his client had not given notice, so that the only thing to say was that it was not a party-wall. There had been an argument lasting for a considerable time before a very learned and celebrated judge of the Chancery Division as to the intricacies of the London Building Act, which Mr. Lansdown and Mr. Briant liked so much. He recalled that there were three particular provisions in that Act round which their argument wrestled, and they came to the conclusion that the London Building Act was at times incomprehensible.

When one got away from the much-discussed London Building Act into the free air of the common law of England, one found that one really came down to the old legal maxim, "*Sic utere tuo "ut alienum non laedas,*" which meant in effect that one must keep one's own nuisances on one's own land, and it did not very much matter what one did on one's own land so long as one did not thereby damage one's neighbour.

Mr. Creswell had pointed out that under the Law of Property Act, 1925, the old conception of tenancy in common of the party-wall had been replaced by another conception—of course quite a theoretical conception—that the wall was divided vertically between the two adjoining owners. That was a very interesting achievement on the part of the legislature, but in point of common practice it did not amount to very much. He thought that Mr. Creswell would agree with him when he said that there was a presumption, where there was anything in the nature of a physical boundary between two properties, that the actual division between them was down the middle ; and that, he presumed, was what the legislature had decided to say in the Act of 1925. It seemed to him that in dealing with a structure which, whether it was a party-wall in the legal sense or not, was in fact a boundary wall between one man and another, it did not matter a very great deal whether the law said that notionally the two owners owned the whole of it jointly or that notionally each owned half of it divided vertically, because it was a thing which was between the two owners, and under the ordinary common law there existed the common duty between the two that that should be upheld to their mutual advantage and not to the disadvantage of one or the other of them. Therefore, of course, any reasonable person would say that when one had to deal with a wall of that kind one would give not statutory notice, because that did not exist, but friendly notice, and one would try to work in co-operation with the adjoining owner. He thought that the absence of any very great body of litigation between adjoining owners in the matter showed that English people were reasonable folk, and it certainly showed that

when they went for advice to experts, such as members of the Chartered Surveyors' Institution, they obtained sound and reasonable advice and not litigious advice.

It was necessary, as Mr. Creswell had so admirably pointed out, to consider the law relating to easements, which in particular in the present context meant the right of support which one owner had the right to expect from his neighbour. There was also the law of trespass, which meant that one must not go poking about in other people's property. It was just as much a trespass to dig a whole through his notional half of the wall as it was to stroll in his back garden without his permission on a Sunday afternoon. It was the same with regard to nuisance. Within certain limits, so long as one committed nuisances on one's own land, one could go on committing them, but one must not injure other people in the process.

That seemed to him what the law of England really amounted to outside London. He would not presume to say what it amounted to inside London, because he did not know. So far as the law was concerned, if he might for a moment address himself to the younger members of his audience, he would say this, that they should not be frightened about it, because the law of England was essentially quite a reasonable thing. He believed it was fair to say that if a surveyor gave what might be called decent advice, the advice which a professional gentleman would give, he was not likely to have very much difficulty with the law relating to the matter under discussion. Personally he believed that if Mr. Creswell's paper were read again in the light of what the author had said in presenting it, it would be found to be of exceptional value, because it put before surveyors matters with which they would have to deal sooner or later, and treated those matters in an attractive and easily comprehensible manner.

Mr. Herbert G. Potter (Fellow) said he was very pleased to have the opportunity of supporting the vote of thanks to Mr. Creswell for an exceedingly able paper. When reading it he had been struck, in spite of what Mr. Macmorran had said, by a feeling of thankfulness that the greater part of his practice, at any rate in party-wall matters, lay within the boundaries of London. It was no compensation for him to be told that there were flaws in the London Building Act and that the law of England was a just law, because the majority of citizens, especially when they were faced with any expenditure on party-walls, shrank from invoking the law of England, which was a heavy machine and a very costly machine to put in motion.

He noticed that in the second sentence in his paper Mr. Creswell said: "Except in London and in a few other places . . . . the

" rights and liabilities of adjoining owners in respect to party-walls " are based on the common law." He himself had not been able to find any other places, and he would be glad if Mr. Cresswell would tell him what those other places were.

He had taken the trouble to write to various important provincial towns to ascertain whether they had any such law in their areas. The only one who answered to the point was Mr. Noel Hill, F.R.I.B.A., who said, very correctly, " In reply to your letter, " this authority is not concerned with the differences between " adjoining owners of party-walls." That was the point which he himself was making, and he was very thankful that he was living where the mode of procedure was laid down for him in the London Building Act. When the special legislation was applied to London, presumably London was the biggest considerable town, but London was now quite a small unit compared with the enormous areas outside it which were covered with houses, and in respect of which quarrels in regard to party-wall matters were likely to arise in future. From the " Notes and Queries " section of the *Journal* it would be seen that such cases frequently did arise and were most puzzling.

Turning to the Law of Property Act he did not propose to go into the legal position, which was beyond him ; he merely wished to criticise it from the point of view of a surveyor in practice. That was the point of view which the majority of members of the Institution would adopt. He wondered whether Section 38, which seemed to be carefully worded, excluded one type of party-wall dispute to which surveyors had become accustomed. The definition in Section 38 (1) of the ownership of a party-wall was as follows: " Where, immediately before the commencement of this " Act, a party-wall or other party structure is held in undivided " shares, the ownership thereof shall be deemed to be severed " vertically as between the respective owners." His experience was that a very large number of party structures were not severed vertically ; they were severed horizontally, longitudinally and in one or two cases even severed diagonally. He had a case at present of two adjoining premises, apparently built many years ago by the same owner, which were separated on the ground level by a passage giving access to the backyards of each of the premises and also giving access to properties in the rear, all the properties now being in different ownerships. There were two storeys over the passage. The front room on the first floor was allocated to building No. 1, and the back room on the first floor to building No. 2. By way of fairness, presumably, and to leave no cause for jealousy between adjoining occupiers, the position was reversed on the second floor, where the front room belonged to building No. 2 and the back room to building No. 1. If the wall was only to be

divided vertically, what happened to the party arch, so to speak? What happened to the floor between the first floor and the second floor? He could not help feeling that a serious mistake had been made in inserting the word "vertically."

Section 38 (2) did give a ray of hope with regard to those quarrels outside London. It said: "Any person interested may, "in case of dispute, apply to the Court for an order declaring the "rights and interests under this section of the persons interested "in any such party structure, and the Court may make such order "as it thinks fit." One knew what had taken place in the courts under the Rent Restrictions Acts; the Court had made many orders that it thought fit. He wondered how far the Court would feel itself justified in going, and whether it would limit itself to defining the rights and interests of the parties or would go further and also define their liabilities. What he would be interested to know in a case of the kind in question was not what his rights and interests were, but whether he could compel an obstructive adjoining owner to join with his client in paying the costs of under-pinning or rebuilding a party-wall or party structure which obviously needed under-pinning or rebuilding for the benefit of both parties. He wondered whether the Court would go as far as that.

Unfortunately he had had a case in point in connection with a comparatively modern pair of buildings which had been wretchedly built in the first place. The party-wall was obviously in need of under-pinning throughout its entire length. His unfortunate client had an empty house on her side of the wall and was anxious to obtain an income from it by letting it, which was hopeless while it was in a state which was at once apparent to anyone who went in, and therefore, as far as she was concerned, the matter was urgent. They approached the adjoining owner to know whether, in the circumstances, he would share the cost of the under-pinning. Not only would he not do so, but he threatened that if in the course of the work any damage was done to his side of the party-wall he would claim damages. In the circumstance he (Mr. Potter) advised his client to refer to her lawyer. The first question the lawyer asked him was what would be the amount of the other man's share of the cost, and he replied £80, though had he known what he came to know later he would have named a considerably higher sum. The lawyer then raised the question of urgency, and he told him that it was extremely urgent. The lawyer then gave this advice, that he could bring an action under Section 38 (2) of the Law of Property Act, but the law's delays prevented him from saying when it would be heard, and it might not be for months; that he could not foretell what judgment would be given, and whether the Court would feel itself justified in ordering the other side to contribute towards the cost. In the circumstances he

advised the client to do the whole work and pay the cost out of her own pocket, with the strict warning while the work was being carried out to see that no damage was done to the other side ; and that was what had to be done. In the face of that, he challenged Mr. Macmorran to say that that procedure under the beautiful common law of England was an improvement on the London Building Act.

To take another point, it was well known that with certain safeguards a man could raise on a party-wall in London. If he had to thickness out he must, but even then in measuring his thickness he could take into account the other man's share in the wall—4½ inches, 7 inches, or whatever it happened to be. If there was no special power to do that outside London, he wondered whether there was any power at all to raise the wall as the law now stood. He took it from what Mr. Creswell said that each owner had an easement of support—cutting away technicalities, it amounted to that—against the other owner's half of the wall. It was a well-known rule in case of easements that the burden must not be increased. If, for example, he had an easement to drain his house through his neighbour's drains, he could not build another half-dozen houses and put the sewage from them through his neighbour's drains, and it was no answer, if the owner of the drains objected, to say " I will increase the size of your " drains to a capacity to take the extra flow." What would be the action of the Court in such a case? The Court could make " such order as it saw fit." He would like Mr. Creswell to consider this question: if one went to the Court and pointed out that that was done, without damage to anybody, inside London under the London Building Act, and asked for similar power and similar safeguards, would the Court consider that its powers extented so far?

He was quite sure that the paper would be a valuable addition to the Library of the Institution.

Mr. John F. Bowden (Member of Council), referring to the Exeter case quoted by Mr. Creswell, said he had two other cases from Exeter which might be of some interest, and which he would like Mr. Creswell to consider. He would like in the first place to draw attention to the Exeter Corporation Act, 1928. That was the first example he had found of compelling a building owner to raise the chimneys of his neighbour when obstruction was caused (although frequently done as a neighbourly act apart from legal obligation), and the provision in the Act in question was to this effect: " In case any building within the city is at any time after " the passing of this Act erected or raised to a greater height than " the adjoining building, and any flues or chimneys of such

" adjoining building are in the outer or party-wall or against the " building so erected or raised, the person erecting or raising " such building shall at his own expense build up those flues and " chimneys so that the top thereof may be of the same height as " the top of the chimneys of the building so erected or raised or " the top of such last-mentioned building, whichever may be the " higher." It was provided that any person who offended against the provisions of that section " shall be liable to a penalty not " exceeding five pounds and to a daily penalty not exceeding forty " shillings."

The second point related to a county court case, *Strang* v. *Simpson,* 1933, heard by Judge Lindley. He referred to it with very great diffidence before learned members of the legal profession, but he had heard from various quarters that that judgment was held in high regard. A demolition order had been made in respect of four very old cottages which were adjacent to another very old but larger building. They were all equally old, and nobody knew to whom the walls belonged. Although damage was caused to the surviving building by the removal of the four others which had rubbed shoulders with it up to that time, Judge Lindley held that, as the demolition was by order of the Council under the Housing Act, 1930, the adjoining defendant owner who had to pull down those buildings was no more liable for the consequences than if the buildings had been blown down or had fallen down through want of repair. There was no obligation at common law on the part of an owner to repair such buildings for the benefit of his neighbour, and if the buildings had blown down there would have been no obligation on him either ; and, therefore, as the demolition was being carried out on a demolition order issued by the council, it was something entirely beyond the control of the owner. The judge held that opinion not only with regard to right of support, but also with reference to protection against weather ; all he did insist on was that reasonable care should be taken, and that there must be no negligence shown on the part of the person demolishing the adjacent buildings. He held that there was no liability for shoring, involving considerable expense. In the case in question some very light shoring, at a trifling cost, had been done, and certain cracks developed and certain injuries were caused, but the judge held that the owner of the buildings pulled down was not liable and entered judgment in favour of the defendant owner.

There were now several cases in Exeter of a similar kind, and the lesson to be learned from that case cited was that care was needed in getting the parties together—the owner of the property in respect of which a demolition order had been made and the adjoining owner ; but if the judgment of Judge Lindley was

sound (and in his summing up he cited *Jones* v. *Pritchard* (1908), 1 Ch. 630, or 637), it did throw a very different light on the liability of an owner of property who had been ordered to demolish it under the Housing Act, 1930, and showed a different interpretation of *Jones* v. *Pritchard* than that given by the reader of the paper.

He would be glad if Mr. Creswell would pay some regard to those points in his reply.

Mr. C. Herbert Bedells (Past-President) felt that he must intervene to say a few words on the matter, because he thought that he had a unique experience. During the session before last, a paper on "Fire insurance" had been read by Mr. John McMullen Brooks, and he had had the pleasure of comparing that with a paper which he himself had had the honour to read, and which had appeared in the *Transactions* about thirty years previously. He had contributed a paper on the subject now under discussion to the *Transactions* forty-four years ago, and therefore it was of particular interest to him to note the changes which had been made and the changes which had not been made in the intervening period. He wished to put one or two questions to Mr. Creswell, but he thought, in view of the lateness of the hour, he would be consulting the convenience of the meeting if he asked leave to do so in writing.

Mr. Arthur H. Davis (Fellow) said that Mr. Potter had raised one or two very interesting points, including one which he had intended to raise himself, namely, the question of the legal vertical division of a party-wall. He could visualise a case where a building owner had thicknessed and raised the party-wall so that the larger portion of the brickwork was upon his own land, and in such a case it would seem a legal anomaly that the vertical division should be down the centre of that party-wall when the building owner had built and thicknessed it on his own land.

Mr. Creswell had referred to the case of *Roskill* v. *Cook*, and personally he would like to mention a very interesting case with which he had been concerned and which was more or less on all fours with that case, though fortunately the results were not so disastrous. It arose out of a breach of the London Building Act, the building owner not having given proper notice to the adjoining owner. In view of the fact that reconstruction of houses, and particularly old houses, and their conversion into maisonettes and flats was being carried out extensively in London at the present time, he thought the subject-matter of that case was one which should be borne in mind. In the case of a terrace house, in taking out an old fireplace in one of the rooms, the building owner put in a larger and more modern stove with a

large fireclay back. In doing that work the builder had, without consent, cut into the back of the fireplace and cut into the thickness of the party-wall. Unfortunately for the building owner there was a flaw in the fireclay back and it was cracked, and the person on the other side was very alarmed at the great amount of heat which came on to his wall and which in fact caused a certain amount of scorching of the skirting. He (Mr. Davis) was asked to go and see what was the best thing to do. The first thing was to make good the cutting away at the back of the stove where the building owner had interfered with the thickness of the party-wall, and then to leave a small space, about 3 inches, between the fireclay back of the new stove and the party-wall to provide an air space, so that the actual back of the new stove was not contiguous with the party-wall.

With regard to procedure from a surveyor's standpoint, he had been fortunate in never having any difficulty in party-wall matters outside London. The first thing he did was to write to the adjoining owner suggesting that that owner should appoint a surveyor-arbitrator. He said "surveyor-arbitrator" because he wanted if possible to bring the procedure under the Arbitration Acts, 1889 and 1934, so that the procedure could more or less follow the lines laid down in the London Building Act of 1930, except that the third surveyor was actually an umpire and not a "third surveyor." In his letter he called the attention of the adjoining owner to the works to be done, and when suggesting that the adjoining owner appoint a surveyor-arbitrator, mentioned that the building owner, his client, was prepared to pay the reasonable fees of such a surveyor. If that offer were made, there would be little difficulty in getting the adjoining owner to appoint a surveyor, because he realised that he would get expert advice at no cost to himself; and, as in London the building owner paid the fees of the surveyor to the adjoining owner, there seemed no reason why that should not be done outside London.

The vote of thanks was carried with acclamation, and the proceedings then terminated.

Mr. W. T. Creswell, in acknowledging the vote of thanks, said it had given him great pleasure to prepare his paper and even greater pleasure to present it at a meeting of the Institution; he had not imagined that it would give rise to so lengthy and animated a discussion. Ever since Mr. Lansdown spoke he had been anxious to reply to one or two of the points raised, but the President had asked him to reply in the *Journal* later on. He would endeavour to do so, and he thanked them for the expression of the views of all present in respect to the resolution put by the President.

The following written communications have been received:—

From Mr. C. Herbert Bedells (Past-President)—

Owing to the lateness of the hour I received permission from the President to put on paper a few questions upon Mr. Creswell's paper.

It was very interesting to me, after having read again the paper I had the honour of contributing to the *Transactions* over 44 years ago, to find in the present paper the references to many of the old cases such as *Watson* v. *Gray, Knight* v. *Purcell, Weston* v. *Arnold, Steadman* v. *Smith, Stokes* v. *Standard Bank,* upon which I had relied, and I have to join in the thanks to Mr. Creswell for bringing our knowledge up to date.

Mr. Creswell refers to the case of *Lewis* v. *Charing Cross, Euston and Hampstead Railway*. From that and other cases it is clear that in London all rights of owners must be found within the four corners of the Building Act, and that common law cannot be invoked. What happens when the Act itself or a special private Act exempts certain properties from the operation of the Building Act? Does common law revive when the Act which would have ousted its application is excluded?

Following the order of the paper, my second question has already been raised by one of the speakers—the third category of party-walls where the wall belongs to one owner but is subject to an easement in favour of the other. How can it be said that "the "same considerations apply" unless the reference is confined to cases in which the wall and the easement are co-extensive—a circumstance which I cannot help feeling does not obtain in any large proportion of walls coming within this category?

The next question is whether the observation "In general it "may be said that the term 'party-wall' means and may properly "be applied to any wall which separates adjoining lands belonging "to different owners" is not calculated to mislead as it stands. Suppose one of the owners of adjoining lands excavates on the boundary of his land and erects a wall thereon, he would be very surprised to be told that the wall which he built as an external wall might properly have applied to it the term "party-wall."

It is said that a wall to which tenancy in common might otherwise apply "is for legal purposes considered as divided '*equally*'" (the italics are mine). The Schedule does not use the word, but refers to a vertical severance. Does not the giving of the Court a discretion to make such order as it thinks fit seem inconsistent with

a definite equality division? And, further, can this seemingly very wide discretion to deal with the "rights and interests" of the parties make it competent for the Court to deal in its order with such questions as upkeep, additional user, and payment therefor?

Until the Act of 3 & 4 Will., c. 27, repealed it there was a legal obligation to contribute a share of needful repairs, and if such matters are not within the discretion of the Court it seems a pity that the opportunity of making such matters clear in the future was not taken advantage of.

Referring to Mr. Creswell's reference to demolition orders, may I ask his view as to the effect of such an order, say, in the case of a house in a terrace? Would it cover and include the demolition of the parts of the party-walls on either side appertaining to such house?

And in relation to this part of the Law of Property Act might I refer to the question of "salvage," lightly touched upon by Mr. Cresswell when he points out that in an American case it was conceived that where a party-wall falls into such a ruinous state that rebuilding is imperative, the Court could compel contribution on the ground that the expenditure was in the nature of salvage? Is there no authority or precedent other than an American case? I find that I had a note of reference to this matter in a case of *Leigh* v. *Dickeson* (L.R., 12 Q.B.D. 194), in which was cited the case of *Campbell* v. *Mesier* (4 John, 334), but I have not the reports of either; and, secondly, would the abolition of the presumption of a "tenancy in common" affect the doctrine of salvage, which, as I have understood it, is applicable only to common interest in the thing saved?

My final question is with regard to the reference to liability for nuisance arising from the part of a party-wall belonging to an owner who had cleared his land. I am not clear how this applies in the case suggested, where a party-wall only extends to a height required as a support to purlins. There being no party-wall above this level, how can any liability attach to the owner of the cleared site in respect of or appurtenant to the party-wall which only exists below the gap?

To suggest otherwise would postulate, would it not, not only a "right of support" but a right of protection?

From Mr. CHRISTOPHER CHART (Member of Council)—

The discussion on Mr. Creswell's paper was so protracted that I was unable to put to the learned author the questions which follow:—

On page 94 Mr. Creswell quotes two cases—*Weston* v. *Arnold* and *Knight* v. *Pursell*—but it is not clear to me whether these are quoted as applicable to London or to outside London, and I should like to know which is intended.

In Mr. Bernard Dicksee's work on the London Building Act, 1930, he says of *Weston* v. *Arnold* that it was a case taken under the Bristol Improvements Acts and was not an action to enforce the observation of the Acts, but an action between adjoining owners to compel the removal of an existing right of light. Further, Mr. Dicksee goes on to say that so far as London is concerned it is overruled by *Williams* v. *Bull* (1890), but apparently due to the provision in Section 127 of the London Building Act preserving to the dominant tenement existing easements of light in a party-wall. *Knight* v. *Purcell* is a London case decided under the Metropolitan Building Act, 1855, and—again I quote Mr. Dicksee—the question whether a wall was a party-wall (for the purposes of that Act) was held to depend upon the mode of user rather than the right of ownership.

If this case is to be taken as applicable to outside London it hardly seems reconcilable with the statement later on that the ownership of a party-wall depends on and follows the ownership of the land on which it stands.

Lastly, at the foot of page 98 Mr. Creswell quotes the case of *St. Anne's Well Brewery Co.* v. *Roberts and Others.* The judgment is so extraordinary, in view of the fact set out, that I wonder if that was really the end of it. There is a report of the case in our *Journal*, Vol. VIII., page 123, not of the proceedings in the Court of first instance, but of those in the Court of Appeal, where the decision given below was reversed, and as I read that report the result was exactly the opposite of that given in the paper.

[*Mr. Creswell's written reply will be published in the* "Transactions" *issued with the April* "Journal."]

Paper No. 567.

INVESTMENT COMPANIES AND RURAL LAND.

By E. P. Weller, M.A., F.L.A.S. (Chartered Surveyor).

Paper to be read at the Ordinary General Meeting of the Chartered Surveyors' Institution on Monday, 2nd March, 1936.

The rural landlord's position as a partner in the agricultural industry may be considered from two points of view. The amount and security of his rents and the proper maintenance of his capital assets depend upon farm profits, and he is, therefore, closely interested in plans for increasing agricultural prosperity. But he is not merely a rent receiver and a sleeping partner ; he has definite functions to exercise, and these have an important influence upon farming efficiency, and, therefore, upon his own financial returns.

It has been said that landlords, because they lack interest, knowledge, aptitude or means, have been incompetent. Some people have gone further and have contended that the landlord and tenant system, which is traditional in this country, has broken down. Whether such criticisms are well founded or not, there is no doubt that great changes have taken place in the ownership of land and they are still continuing. Large estates have been broken up, and the number of small owners, particularly of those occupying their own farms, has greatly increased. At the same time the attitude of owners generally towards their land has tended to become more commercial, and the business of landowning has become much more complicated because of the flood of legislation, the rapid changes in economic and social conditions, and the suburbanisation of

rural districts consequent upon the development of road transport.

These changes have not followed any prearranged plan, and they have not been directed towards any definite objective. They have sprung from the pressure of circumstances upon individuals and the desire of each to profit by his opportunities or to make the best of a bad job. Many critics have seen in the present situation a grave danger to agriculture and the countryside, and several different proposals have been made with the object of putting the ownership and management of rural land on a satisfactory basis. I want to mention some of these because the suggestion which we have to examine must be considered with possible alternatives in mind.

Mr. Orwin and Colonel Peel(1) advocate State ownership of the land with a decentralised system of management by professional land agents. Mr. G. T. Garratt(2) also supports State ownership, but he would vest the landlord's functions in local committees. Sir William Dampier(3) sees difficulties and dangers in both these schemes and believes in graduated holdings, credit facilities, profit sharing, co-operation and rural education. Dr. Martin Leake(4) distinguishes agriculture from industry by the individualism which is characteristic of farming, and he traces to that the roots of the present distress. He therefore proposes that the land should be owned by business companies who would let it to tenants on the *metayer* system, exercising strict control over cultivation and enforcing a large measure of co-operation in production and marketing. Professor Stapledon,(5) on the other hand, sees salvation in an increase of occupying ownership under regional organisation and control, with the provision of

(1) *The Tenure of Agricultural Land,* by C. S. Orwin and W. R. Peel.

(2) *The Organisation of Farming,* by G. T. Garratt.

(3) *Politics and the Land,* by C. Dampier-Whetham.

(4) *Unity, National and Imperial,* by H. Martin Leake.

(5) *The Land Now and To-morrow,* by R. G. Stapledon.

credit and other facilities accompanied by improvement programmes which owners would be compelled to carry out, the alternative being compulsory purchase of the holding by the State for re-conditioning. Politicians and "reformers" have produced other schemes varying from nationalisation by expropriation to comparatively mild forms of control.

In my address to the Institution's Agricultural Conference in 1934 on "The future of the ownership of rural "land in England" I attempted a short analysis of the various forms of land tenure, and I briefly examined the possibilities of ownership and management by investment companies as an alternative to occupying ownership or State ownership in filling the place of the old landlords. I have been asked to develop that subject in this paper. I embark on the task with diffidence, because I know that you are accustomed to papers by experts, and I think that no one can claim to be an expert in this matter. My own interest in it was aroused some time ago by my experiences in managing estates in various parts of the country and in investing substantial sums in different securities, including both urban and rural land. In this latter connection I have personally inspected many thousands of acres of rural land, and I have had to consider alternative investments from several different points of view. Lately I have been in touch with a group of investigators who have been enquiring into the possibilities of corporate landownership amongst a number of other social and economic problems of current importance, and the results of this work have been of much assistance to me. I do not set out to do more than put before you certain aspects of the subject. It cannot be fully explored in one paper or in one evening's discussion. The Institution and its members are well qualified to assist in the further investigations which are clearly necessary before any policy can be formulated, and I think it is highly desirable that the special knowledge and experience at the disposal of the Institution should be brought to bear on any proposal affecting landownership before it emerges

on to the more heated and amateur stage of political and party opinion.

Land Investment Companies.

The proposal we have to consider is that rural land should be owned and managed in large blocks by limited liability companies. The policy of such companies would be to hold land as a long-term investment and not to deal in it. They would look for their return from the annual net income produced by good management and not from the speculative element of capital appreciation or profit on re-sales. For the purpose of this paper it is assumed that their functions would be those of the landlord—that is, they would not engage directly in production, but they would own the land, maintain its permanent equipment, such as buildings, roads, fences and drains, and they would select and control tenants. Like many individual landowners, they might also farm some of their land or work minerals, they would probably manage the woodlands and they might even embark on retail trade ; but such enterprises involve separate considerations, and I propose to exclude them so that my subject will not become unnecessarily complex or extensive.

The great development of joint-stock enterprise in urban industry and commerce has no parallel in rural landownership. There are some examples of companies owning and farming large areas, but their ownership is incidental to the farming business, and the capital is farming capital. There are also private estate companies, but they represent merely a device to deal with taxation, and the land, capital and management really remain in the hands of the individual owner. The wholesale withdrawal by estate owners of themselves and their capital from rural land has not been followed by any flow of general investment capital into the land. This is not because the land does not need it. Few farmers wish to sink their farming capital in the purchase of their farms, as they are compelled to do if no landlord's

capital is forthcoming, and large sums are required to repair and recondition buildings and equipment generally and to bring it up to the requirements of modern farming. Stapledon makes several emphatic and illuminating statements on this subject, some of which are as follows:—

> "In the great majority of the cases which have come to my notice the new owners are short of working capital, with the consequence that repairs to buildings are neglected, and it is only occasionally that real and drastic improvements to either the land or the equipment are being undertaken.([6])
>
> "There are whole districts where the farmhouses, buildings and cottages are entirely out of keeping with modern standards, and where there is much dilapidation. . . . I should like to see the matter of rural housing and farm buildings placed in the forefront in relation to the resuscitation of the countryside.([7])
>
> "The question of rural water supply has been a matter of urgency for many a long year; without abundant and pure water ready to hand no living conditions can be considered satisfactory and no steadings maintained in a proper state of cleanliness."([8])

These opinions are endorsed by MacGregor in two studies of farms in Devon and Cornwall.([9]) A further interesting illustration is provided by the analysis of the records of what had to be done to the cowsheds on 102 farms before they could be licensed for the production of Certified or Grade "A" (T.T.) milk.([10]) On 35 of these, new sheds were built or other buildings converted, on 38 the alterations cost more than 30*s*. a stall, 17 were altered at a lower cost, and only 12 required no attention.

([6]) *The Land Now and To-morrow*, by R. G. Stapledon.

([7]) *ibid.*, p. 216.

([8]) *ibid.*, p. 217.

([9]) "Changes in Permanent Equipment on the South Devon Farms," by J. J. MacGregor; *Seale-Hayne Agricultural College*, Pamphlet No. 43. "Economic Changes on Devon and Cornwall Estates," by J. J. Macgregor: *Estates Magazine*, May, 1934.

([10]) *The Farm Economist*, Vol. II., No. 1, p. 3.

Most of us can confirm from our own observations the existence of this state of affairs. On only two or three of the many farms which I have inspected with a view to purchase were the buildings at all satisfactory in type or condition. The capital needed to put these matters right exists in vast sums which cannot be absorbed by industry and commerce; but there is no channel, such as joint-stock companies provide in other directions, through which it could flow into rural land. It is, therefore, reasonable to enquire if such a channel would be desirable and what has hindered its construction.

Capitalisation and management are closely connected. Management cannot be efficient without adequate capital, and capital may be wasted without skilled management. While joint-stock capitalisation and efficient large-scale management are not necessarily interdependent they are frequently found together in industry generally, and it is suggested that the holding of large blocks of land by investment companies would secure the continuance and extension of the advantages of large-scale management which is threatened with extinction by the impoverishment and disappearance of large estates in individual ownership.

This extensive corporate control might be brought about in various ways. Individual owners of adjoining estates might transfer their land to a company, taking up the shares themselves or distributing them to members of their families, keeping the control in their own hands and renting from the company those portions of the property, such as the mansion-houses, which they wished to occupy themselves. This is an extension of the principle of private estate companies which has already been widely adopted. Compared with them it might present some additional advantages, especially in the case of the smaller estates, by way of greater latitude in finance and management, but if it were to be successful the individual owners would have to put the common good before their individual preferences. Secondly, blocks of land might be acquired by companies financed by public subscription. This would bring general

investment capital into land, and should facilitate economic and efficient management. These two methods might be combined by public subscription to a company formed by a group of estate owners, or by the sale in the open market of some of their shares. Thirdly, occupying owners might sell their farms to an investment company for cash or shares, remaining in occupation as tenants. Each method raises rather different questions which I do not propose to examine separately in detail. I want to deal with the subject on broad lines by describing the advantages of corporate ownership and then examining the apparent disadvantages and difficulties to find how much substance there is in them, and what, if anything, could be done to overcome them.

Advantages of Corporate Ownership.

Finance.

On the sale of an estate a large proportion of the farms are usually bought by farmers either direct or through a land speculator. The former owner's capital is lost to rural land and is replaced by farming capital. If a farmer is thus compelled to sink part of his working capital in land and its permanent equipment, he must either reduce his acreage and waste part of his managerial ability or he must stock and cultivate his land less intensively and run the risk of deterioration and loss. If he supplements his capital by a mortgage, he creates a capital liability and a fixed annual charge which may become a crippling burden in bad times. Most of us have seen all these things happen during the past fifteen years. Moreover, the owner-occupier is more tied to his farm than a tenant, and it is more difficult for him to move to another if a change in his own circumstances or in agricultural conditions makes it desirable. It is true that he has the satisfaction of knowing that he cannot be disturbed and that any expenditure on his holding will benefit his own property, but he is not really much better off in these respects than a tenant with the protection of the Agricultural Holdings Act, and he has

no one to share the burden of bad times or to assist in the maintenance and capital improvement of his buildings. There is evidence that most farmers would rather hold their farms as tenants than as owners, and they only become owners because landlord's capital is not forthcoming to replace that which has been withdrawn from the land.

The break-up of estates is not due to any disruptive forces peculiar to the land but to the prevailing method of financing it. If large industrial concerns were financed on the same individualistic basis, they would break up in the same way on the death of the owner or on a change in his circumstances or interests. Such concerns remain intact because they are financed on the joint-stock principle which permits a free interchange of capital without affecting the nominal ownership or the management of the business. If this could be done with landed estates it is not unlikely that some owners who now feel compelled to sell outright would leave part of their capital in the land, since it would be fluid and they would be relieved from the risks and obligations of sole personal ownership. Division of ownership (*e.g.*, amongst members of a family) would be simplified and the transfer of the share of any individual would be independent of the title to the land. The issue of debentures is simpler than borrowing on mortgage and the loan is usually more stable in duration and rate of interest.

However the principle may appeal to landlords and farmers, the success of joint-stock ownership on any large scale would depend upon the attitude of the investing public. There is reason for thinking that they would not be indifferent to it. Insurance companies and similar concerns, having large funds to invest and being faced with a restricted range of securities and low interest rates, are considering agricultural land as a last resort, but they are deterred by the technical problems involved in the purchase and management of land and by the fact that it cannot be regarded as a fluid form of capital. To the private investor also the problems of individual investment in land are considerable. He has to find a farm or estate which suits his

capital and other requirements, and unless his capital is large it is difficult for him to spread his risks. If he wanted to realise his capital at short notice he might not be able to find a willing buyer and a forced sale might result in serious loss. Shares in land investment companies would solve these difficulties for the financial concern and the private investor, and they would be available also for the small capitalist for whom individual investment in land is practically impossible.

The growth of fixed investment trusts suggests that the investing public is seeking securities intermediate between industrial shares and " gilt-edged " stocks. The special committee recently appointed by the Stock Exchange authorities to study the fixed trust movement reported " That the fixed trust movement owes its growth . . . to " a genuine public demand for a means by which the com- " paratively small investor may enter a slightly speculative " but clearly defined field of investment with the benefits " of a spread risk." Although investment in land shares would not spread risks in the same way, it would give the stability which land is supposed to possess, and it would avoid some of the drawbacks of redeemable fixed-interest-bearing securities. British investors have shown no reluctance to finance highly speculative forms of agricultural production abroad, and it is not unlikely that they would invest in rural land at home if they could do so conveniently and in a way which they understand.

On general grounds there is much to be said for broadening the basis of capitalisation of rural land by the inclusion of financial concerns and urban investors. The direct financial interest of non-rural communities in the fortunes of agriculture and the countryside should make for a better understanding between town and country and help to strengthen and consolidate our national life.

Taxation.

The advantages of joint-stock ownership over individual ownership in connection with taxation are well known.

Though impaired by recent legislation, they are still sufficient to make private estate companies worth while in many cases. Public investment companies might offer still greater advantages, particularly in the matter of death duties. On the death of an owner of shares the duty is calculated on the value of the shares. This may afford some relief as compared with the usual basis, and further relief might be obtained by the previous transfer of shares to members of the owner's family. But it is in the matter of finding the money to pay the duties that the public company is most useful. In the case of the private company there is not likely to be any market for the shares, and unless money is available from some source outside the estate it becomes necessary to sell part of the land, and it may be decided to wind up the company and sell the property. In a public company there is a wider distinction between the business and the private fortunes of the shareholders. When a shareholder dies, a part or the whole of his holding can be sold for the payment of duties or other purposes, and the only effect on the company is that so much of its capital has passed into other hands. The much-discussed effect of the death duties in causing the break-up of landed estates is due rather to the methods by which the estates are financed than to the incidence of the duties. If other large concerns were similarly capitalised they would run the same risk of disruption. Since it is unlikely that the burden of death duties will be materially lightened in any period which we can foresee, rural land, like industry, can only secure continuity of finance and management by rendering its capital fluid and independent of changes in individual fortunes.

Planning.

It is unfortunate that the need for re-planning arising from the changes in farming practice, the development of road transport, the extension of building development into rural districts, and the requirements of public health should have coincided with the multiplication of small ownerships

which make such planning much more difficult. The State has intervened in what may be termed social planning by means of statutes dealing with town and country planning, rural housing, ribbon development and road improvement. It is common experience that these Acts can be worked most satisfactorily when it is possible for the responsible authority to co-operate with large estate owners. Damage by " severance " is reduced or avoided when fields can be re-allocated to holdings in one ownership ; restrictions in one area are not likely to be resisted if the same owner will get the benefit of them elsewhere ; and the net gain which should result from all sound planning will benefit the large landowner as well as the community.

The provisions of these Acts, however, are mainly negative, except as regards housing and road improvement. They do something to check the damage caused by the competition and diversity of interests amongst small owners, but little or nothing to create the positive planning and active improvement which were characteristic of so many of the old estates. They do not touch at all the economic re-planning of farms which is so urgently required. There can be no doubt that the lay-out of many farms is entirely unsuited to the needs of modern farming, and careful readjustment of the size and shape of farms and fields and their relation to roads and buildings would reduce costs and increase production to the substantial benefit of both tenant and landlord. With every farm separately owned this is virtually impossible. On a large corporate estate economically managed it would be an obvious necessity.

Equipment and Services.

In the past fifty years very little has been done in the country generally to improve the permanent equipment of the land and to bring it up to date, though in the same period there have been great changes in agricultural practice, and in some districts the type of farming has entirely altered. In some respects, particularly the condition of buildings

and drains, the general situation is definitely worse. Moreover, very slight progress has been made towards bringing into the country services, such as water and electricity, which are socially and economically desirable. With the land in the hands of small or impoverished owners, improvement is bound to be slow at the best, since private schemes are impossible and public schemes are opposed by those whose financial policy consists in saving rather than spending. Such large-scale improvements require capital, continuity of policy, imaginative and purposeful management and the control of an area large enough to justify the expenditure involved. It is difficult to see how these conditions can be secured except by means of joint-stock ownership and management of extensive estates.

The ultimate object of all such schemes would be, of course, the improvement of the rental value of the estate by increasing the profit-earning capacity of the farms. This might also be done by providing for tenants agricultural services such as the use of stallions, bulls and boars and the larger and more costly machines. In approved cases the tenant might be financed so that the land would not lose an able man because of his want of capital. Marketing might be organised, and the disposal of produce might be assisted by the establishment of estate abattoirs, and bacon, milk and canning factories. This is going rather beyond my main thesis, but it is not improbable that agricultural production and marketing could be organised on the basis of large joint-stock estates more successfully than in any other way, since competition between different interests would be reduced and the tenant-farmer would be left free to get on with his own business of farming.

Management.

I am not one of those who believe that we do not know how to manage estates properly in this country, but I do think that the opportunities for really efficient management are rather rare. Some estates are too small to justify the employment of a first-class manager and technical staff ; on

others the management is hampered by shortage of capital ; in some cases the owner's object is sport or a hobby rather than financial returns ; in others his tenure is too short or uncertain to permit of the long views and continuity of policy which are essential to good management. Of course there are estates which are free from these difficulties and which are examples of sound economic management. There are others where the results obtained under adverse conditions are a tribute to the skill and ingenuity of the managers. But without implying any serious criticism of present management, I think it will be generally admitted that better results could be obtained at reduced cost if the conditions of finance and tenure were more favourable.

The connection between adequate capitalisation and good management has already been noticed, and it has been suggested that joint-stock investment might supply the capital required for the holding of land in large blocks and for the reconditioning of its permanent equipment. The opportunities which such large estates, firmly held, would give for sound planning and the provision of adequate services has also been described. Now I want to deal with their organisation and administration.

Each estate should be of such a size (having regard to its type and cultivation) as would fully employ as general manager a man of first-class training and ability. Under him the necessary technical and operative staffs would be controlled by specialists in the various branches of land agency and surveying, including agriculture, building, forestry, accountancy, and the legal side. On a large estate the unit cost of this system of management might well be less than that of the usual method on the small estate, and the results should be much better. The agent on the small estate has to be Jack-of-all-trades, and with the increasing complexity of management this is becoming more and more difficult. One expedient increasingly adopted is the management of a number of estates by a firm in general practice, but in many cases the estates are so scattered that much time is spent in travelling, and it is difficult for those

in charge to keep in close touch with their work. Probably the personnel of such a firm could work more effectively and at relatively lower cost if they could concentrate their efforts upon a compact estate of suitable size.

Besides improving the returns from the land this form of estate organisation should benefit members of the surveyor's profession by offering a series of salaried posts of increasing responsibility with reasonable security and prospects, and by encouraging specialisation. At present the young man who contemplates general practice is faced with an awkward gap between the completion of his training and the time when he is sufficiently experienced to qualify for a partnership. If instead he chooses resident agency his position is often precarious and his advancement depends on moving from post to post with all the dislocation and risks which that entails. And although it is generally recognised that the wider field covered by land management makes specialisation desirable, the young man has little encouragement or chance to specialise. Specialisation should make him more valuable, but the opportunities for specialists in rural practice are so few that it may only make him appear unsuitable for any particular post which falls vacant. The Institution has recognised the need for what may be termed "post-graduate specialisation" by establishing its special diplomas. It should be the rule rather than the exception for practitioners to qualify for these diplomas.

It appears, therefore, that the existence of large estates in corporate ownership would further raise the standard of land management by improving the opportunities and prospects of those entering the profession, and would also provide favourable conditions under which skilled and efficient managers would obtain the best results.

Disadvantages and Difficulties of Corporate Ownership.

Commercialisation.

The land might be industrialised and its old traditions and spirit destroyed. But this is happening now and the pro-

cess has already gone far. Small owners, each anxious to make the most of his holding and unrestrained by long-term policy or the effect on other areas, represent the worst kind of commercialisation. It is this which has been largely responsible for the statutory limitation of the powers of owners. The break-up of estates has also tended to deprive rural communities of leadership and cohesion. If it is said that management on the lines I have indicated would introduce a stronger business element into the relations between landlord and tenant than in the past, it may be asked whether that would not be a good thing. Formal agreements which are freely disregarded, and dealings which are based on sentiment rather than mutual advantage, breed uncertainty and slackness which tend to be demoralising. One would not expect an audience of farmers to be hard on agricultural tenants, but in a discussion at the Farmers' Club on land tenure([12]) the " ' good farmer ' who let his land at a low " rental, never turned out a tenant who paid his rent, and " was satisfied with almost any standard of farming, how-" ever low it might be " was freely criticised and was held to be mainly responsible for " slovenly farming and a low " standard of production."

If there is any risk of industrialisation we must set against it the possibility that joint-stock enterprise would bring new life and purpose into the countryside which is in danger of becoming socially and economically derelict.

Nationalisation.

It may be feared that the acquisition of large areas of land by public companies would be a step towards nationalisation of the land because it would make State purchase and management easier. There is evidence, however, that if State ownership came about it would be for quite different reasons. One of the strongest arguments for nationalisation of the coal-mining industry is not that it is well organised in large units, but that the number of

([12]) *Journal of The Farmers' Club*, Part III., April, 1920.

separate ownerships and the lack of co-ordinated management result in much waste and inefficiency. The case for nationalisation of the land is usually based upon similar charges against landowners. The large increase of occupying ownership not only makes efficient organisation and management more difficult because of the sub-division of the land into small units, but it also removes all checks upon bad farming and the deterioration of the land and its permanent equipment. Although legislation has curtailed the landlord's power without providing any other means of controlling the tenant, the landlord can still select the best tenants for his farms and exercise some supervision over them. Under a system of occupying ownership, however, the sole qualification necessary for the acquisition of a farm is the ability to find the purchase price, and the land and buildings can then be used or misused at will. As long ago as 1924 Lord Halifax (then the Right Hon. Edward Wood, M.P., Minister of Agriculture) emphasised the dangers of deterioration consequent upon the removal of landlord's capital and the increase of occupying ownership, and said "the nation is going to say 'we cannot watch this process "'going on' and the State will come in to fill the function "of the old landlord by lending capital. When it does that "you may depend upon it that it will claim some measure "of control in the business that it finances, and so you may "well find yourselves in the course of the next thirty or "forty years within measurable distance of something like "nationalisation by a side wind."

Measures for State control have already appeared on the Statute Book. The Agriculture Act, 1920, empowered the Minister of Agriculture under certain conditions to appoint a receiver or manager to administer an estate which was grossly mismanaged "to such an extent as to prejudice "materially the production of food thereon or the welfare "of those who are engaged in the cultivation of the estate." The Agricultural Land (Utilisation) Act, 1931, enables the Minister of Agriculture to acquire land for purposes of reconditioning by reclamations, drainage or other work

necessary to enable it to be satisfactorily and economically used for agricultural purposes. The 1920 Act was repealed in 1921, and the 1931 Act has not been put into operation, but the fact that these provisions became law is significant.

If nationalisation is thought to be undesirable, the establishment of large well-managed corporate estates might be a method of avoiding it, and such estates might offer many of the advantages of organisation and control claimed for State ownership while preserving the land as a field for private investment and enterprise.

Monopolisation.

Would the development of land investment companies be contrary to the interests of the individual owner or occupier? The contrary seems most probable. The landlord who wished to sell might find in an investment company a purchaser who would keep the estate intact. It is unlikely that the corporate estates would cover so much of our 30,000,000 acres of agricultural land that ample opportunities would not remain for those who wished to hold land individually for investment, residence or cultivation. At the same time, farmers who preferred to occupy land as tenants (and they seem to predominate) would have more chance of doing so, and under improved conditions. The tendency of large manufacturing and trading companies is to eliminate the small business, but the tenant-farmer would be an essential factor in the scheme of land investment companies.

Speculation.

There is a danger that the business of investment companies might degenerate into mere land speculation with the main object of exploiting the land and those interested in it. The system of organisation and management which I have described and the expenditure of capital on equipment and services would be some safeguard against this, as the returns would be dependent on permanent ownership and con-

tinuous policy. Some control could also be imposed by the articles of association and the selection of suitable directors and staff.

Valuation.

Whatever the advantages which land investment companies may appear to offer, it is certain that they would not succeed unless they could secure an adequate return on the capital represented by the purchase price of the land. There is a consensus of expert opinion that the normal price of agricultural land at present is about 25 years' purchase of the estimated net rental value. During the past few years estates comprising some 80,000 acres have been offered to my College. In many cases the estimated yield could not be calculated from the details supplied, but I have aggregated all those where sufficient information was given, with the following results. The figures represent 65 agricultural estates, varying from 48 to 3,400 acres, in many different parts of England:—

Total area	45,555 acres
Rent or rental value	... £53,364
Tithe and land tax	... £7,027
Price asked	...£863,595
Return on price asked represented by rent *less* the tithe and land tax ...	5·3 per cent.
Return on price asked represented by rent *less* tithe, land tax and one-fifth of gross rent for other outgoings ...	4·1 ,, ,,

I think my allowance of 20 per cent. for "other outgoings" is more generous than is usual in valuing estates for sale. I have found it difficult to convince intending vendors, or those representing them, that any more than 10 per cent. should be allowed. On the other hand actual experience and the results of investigations indicate a much higher figure. For example, Sir William Dampier gave to the Agricultural Economics Society data for the year 1929

collected by the Central Landowners' Association from 22 estates covering 276,136 acres on which the cost of maintenance, insurance and management amounted to over 44 per cent. of the gross assessable value,[13] and this is confirmed by figures for estates with which I am concerned. It seems probable, therefore, that the actual cost of maintenance over a period of years, especially having regard to the condition of many farm buildings, would usually be substantially higher, and the net income and rate of interest correspondingly lower, than is commonly assumed in the valuations on which land changes hands.

If the estimated return is reduced by an adequate allowance for expenses, it seems likely, under present conditions, to be considerably less than 4 per cent. on the purchase price. Having regard to the risks involved I hardly think that a rate of return little if any higher than that yielded by Government stocks would be regarded as satisfactory by the ordinary investor. We hear a good deal about the permanence and security of investment in agricultural land, but experience shows that the income from it is subject to considerable variation. It is affected not only by the factors, such as prices and seasons, which determine farm profits, but also by the vicissitudes of individual tenants. Agricultural depression will lower rents generally, but the misfortune or incompetence of a tenant may involve his landlord in serious loss of rent and capital value at any time. It appears, therefore, that the price of land, in comparison with other investments, is higher than is justified by the financial returns and the risks involved, and so it is necessary to examine the causes of this state of affairs and to enquire if the ratio of price and income could be readjusted.

The following are some of the factors which may contribute to the relatively high valuation of agricultural land:—

Social, Residential and Sporting Value.—In the past the

[13] *Journal of the Agricultural Economics Society*, Vol. I., No. 3, p. 59.

ownership of broad acres has been closely associated with social prestige and the enjoyment of rural pleasures and pursuits. This tended to increase the capital value of land in relation to its annual cash yield, since part of the owner's return was not represented by cash income. Of course the countryside still offers residential and recreational advantages, but these can be obtained without the responsibility of large agricultural estates, and a man can put his money and time into industry or trade without sacrificing his social position. In the country ideas change slowly, and it is possible that the valuation of land is still influenced by these personal factors, but their effect must tend to diminish.

Development Value.—I use this term to include potential building value, and also the value of minerals and other materials. In so far as such value is measurable, it is separately calculated and does not affect the agricultural value in relation to the rent. But there is attaching to land an incalculable factor arising from the possibility that at some future time in some unforeseen way its value will be enhanced. This may increase the capital valuation though it adds nothing to the annual income, but the tendency of legislation to appropriate royalties and restrict development is likely to reduce its effect.

Stabilising Value.—One object of long-term investment is to provide against currency depreciation. The real value of the income from fixed-interest-bearing securities diminishes as the value of money in terms of commodities falls. As the income from land depends upon commodities, its real value is more or less independent of changes in the value of money. Illustrations of this are provided by my College records. A piece of land owned by the College "was taken possession of in 1546 by His Serene Majesty "Henry the Eighth in exchange for a rent of £3 annually "to be paid by the Treasury." This was an early case of compulsory acquisition, the consideration being a perpetual annual payment. No doubt the £3 represented the

annual value of the land in terms of money at that time, and the same amount is still paid. This example of the perpetuation of a fixed money payment may be compared with the cases of two farms where the money rents have risen as the value of money has fallen. In 1534 the rental value of one of these farms was £9 12*s.* ; it is now £150. In 1487 the rental value of the other farm was £4 16*s.* 8*d.* ; it is now £200. If all the mediæval endowments of Colleges and other institutions had taken the form of annual payments fixed in terms of money their work to-day would be very much restricted. Another disadvantage of investment in stocks is that they are often redeemable under conditions favourable to the borrower, and there is a risk of loss on reinvestment when capital is cheap. In the case of land, however, the rate of interest represented by the relation of the net income to the purchase price is theoretically obtainable in perpetuity. Probably the individual investor is much more concerned with the immediate return on his capital than with these long-term considerations, but they are important to permanent institutions which invest in land. In a letter which appeared in the *Times* of 7th November, 1934, Mr. R. V. Lennard emphasised this, and advocated the formation of a land investment corporation in which trustees would be authorised to invest so that they might secure the advantages of spread risks and large-scale management. The point I want to make now is that even under present conditions the special value of land as a long-term "insurance" investment may have some influence in raising the price relative to the immediate cash return, though its effect is not likely to be great.

Speculative Value.—The land speculator who buys estates for re-sale regards the estate as a collection of separate assets—house, fittings, cottages, farms, timber, building sites, gravel—and he is expert in selling each item to the best advantage without regard to the effect on the others or to the future of the whole. The margin—often considerable—between wholesale and retail prices

frequently enables the speculator to give more for the estate than would be justified by the annual returns from the estate as a whole, and the existence of this demand must tend to raise prices.

Value for Occupation.—The large increase in occupying ownership proves that the demand for farms for occupation must be an important factor in determining the price—probably the most important of those which we have examined. It is considered an advantage if a farm for sale can be offered with vacant possession, though if buyers for investment predominated a good tenant would be essential. It will be within the experience of many members of this Institution that the value put upon a farm by a farmer wishing to buy it for occupation or by the sitting owner thinking of selling is often much above the normal price based upon the letting value. The reasons for this may include the following:—

(1) The good farmer is prepared to pay a high "virtual rent" out of his total returns as owner-occupier in order to secure the farm he wants.

(2) Many farmers do not seek professional advice on value, but rely upon their own knowledge of land and its farming capabilities, thinking in terms of yields of crops and head of stock rather than financial returns, and failing to distinguish between those portions of the gross returns which should be allocated to landlord's and tenant's capital respectively. This is illustrated by statements made in the tithe rent-charge controversy.

(3) As owners they have no out-of-pocket expenses for management, and their maintenance costs are likely to be low because they do many repairs cheaply with farm labour, they are not affected by the damage caused to adjoining property by cheap and unsightly buildings, and they may be inclined to take a short view and to neglect work

which will represent a serious liability in the future.

(4) Sitting tenants who buy their farms are prepared to pay something extra because their farm is their home as well as their business, and they value their local attachments and local knowledge.

(5) An occupying owner may be, in a small way, a land speculator, and he may not be averse to recovering some of his outlay by selling off timber, small building sites or anything else of value, even though the effect on the market value of the farm may be serious.

It is the competition amongst farmers themselves which is responsible for the high prices due to these causes, and they buy farms because the landlord's capital which would enable them to become tenants is not forthcoming. If joint-stock companies acquired farms for the purpose of letting, the purchasing demand by farmers would be reduced to that extent.

According to the foregoing analysis there are factors which increase the price of land above the normal investment level ; but a good deal is left unexplained. We are told that the ownership of rural land is a burden, that the responsibilities are great and the returns small, and that many landowners would be glad to hand over their property free to the State. Yet when land is offered for sale the over-estimated annual income is capitalised at a rate comparable with gilt-edged securities, and it is argued that the owner would not be justified in selling for less because if he did he would lose income on re-investment in Government stocks. I think there is a good deal which is artificial in the present price of agricultural land. It may be due partly to the aftermath of the post-war boom, when high prices were paid and large mortgages were contracted, and partly to the lingering effects of pre-war conditions. When these have passed away and when the long bill for neglected buildings and equipment has to be met, I should not be sur-

prised to see a general readjustment of capital values on a lower basis, and if that attracted new investment capital into the land it would be a good thing for agriculture.

Even at the present price of land it is possible that joint-stock ownership could show satisfactory returns because of the increased rental values and reduced costs which would result from adequate capitalisation and efficient large-scale organisation and management. That is how other large-scale businesses succeed, and it is well known that they are able not only to distribute large profits, but also to pay high prices for the property they require.

Conclusion.

The chief reason why rural land has not followed the example of urban business and reorganised itself on a joint-stock basis is probably to be found in the social, economic and technical differences between agriculture and other industries. These are not so great as they are sometimes made to appear, and they are diminishing, but they exist. Probably in the matter of finance and organisation one large-scale urban business is not very different from another, and the procedure is well understood by those who specialise in such work. But they do not understand land management, and those who do are not usually experts in high finance. Some effort is always required to bring together interests which have not previously had anything in common and to set them to work jointly in a new direction ; but if the object is worth while, the effort should be made. If it appears that investment companies offer a satisfactory solution to the problem of rural landownership, questions relating to the constitution, finance and administration of such companies will call for discussion with experts in those matters. I have not attempted to deal with them as I have thought it better to confine myself to those prior considerations which are within our proper sphere as surveyors and upon which financiers would require to be convinced before

interesting themselves in any scheme of joint-stock land-ownership.

In order to give corporate ownership and management a fair start and a proper trial some form of State assistance or statutory power might be necessary during an experimental period. That would be a matter for careful consideration at a later stage. I think, however, that permanent State control or reliance on Government intervention is a bad thing for rural land, and I would prefer to see the countryside work out its own salvation.

Before any policy can be formulated or any line of action can be marked out, the following questions will have to be answered:—

(1) Is it desirable, in the interests of the nation and of the countryside, that large areas of rural land should be owned and managed by joint-stock investment companies?

(2) What would be the best form of management?

(3) What would be the optimum size of an estate?

(4) Could such areas of land be acquired, and, if so, how?

(5) Would the price admit of a reasonable rate of return having regard to the possibilities of large-scale organisation and management?

I submit these questions to you as the basis of further investigation. No body of experts in the country is better qualified to answer them than members of the Chartered Surveyors' Institution. Unless we are convinced that the present position and tendency of landownership is perfectly satisfactory, it behoves us to consider carefully the alternatives. My object in this paper has been to make a case for joint-stock ownership. I assume that is what is expected of me, and though the case is not complete and much more might be said on both sides, I hope I have provided material for discussion and criticism.